

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JENN BAIER**

**v.  
DARDEN RESTAURANTS, ET AL.**

**RESPONDENT,**

**APPELLANTS.**

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DOCKET NUMBER WD76584

DATE: February 25, 2014

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Appeal From:

Jackson County Circuit Court  
The Honorable Michael W. Manners, Judge

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Appellate Judges:

Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge, and Zel M. Fischer,  
Special Judge

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Attorneys:

Gene P. Graham and Deborah J. Blakely, Independence, MO, for respondent.

Daniel B. Boatright and Kellie A. Tabor, Kansas City, MO, for appellants.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**JENN BAIER,**

**RESPONDENT,**

**v.**

**DARDEN RESTAURANTS, ET AL.,**

**APPELLANTS.**

No. WD76584

Jackson County

Before Special Division Judges: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge, and Zel M. Fischer, Special Judge

Jenn Baier filed suit alleging Missouri Human Rights Act violations against Darden Restaurants, d/b/a Olive Garden, and others. The defendants filed a motion to dismiss or, in the alternative, to stay proceedings and compel arbitration. The motion alleged that Baier entered into a contract with Darden on January 31, 2011, that required her to arbitrate her claims against the defendants. The trial court denied the motion to compel arbitration. The defendants appeal.

**AFFIRMED.**

**Special Division holds:**

The defendants had the burden to establish the existence of a contract to arbitrate between Darden and Baier. A contract requires offer, acceptance, and bargained for consideration.

Baier signed an acknowledgment of Darden's Dispute Resolution Process on January 31, 2011, her first day of employment with Darden. The Dispute Resolution Process purported to bind both Baier and Darden, and was a bilateral contract by its terms.

A bilateral contract must be accepted by both parties. The acknowledgment signed by Baier included a line for Darden's signature, though no one signed the acknowledgment on Darden's behalf. While a signature is not the only way to establish acceptance of the proposed terms of a bilateral contract, in the absence of a signature, the party claiming that a contract was formed must present other evidence to establish its assent to abide by the terms of the agreement.

Here, because Darden did not sign the acknowledgement, the trial court was required to resolve a question of fact: Did Darden establish its assent to abide by the terms of the Dispute Resolution Procedure?

Darden contends that its mere extension of the acknowledgement to Baier evidenced its assent to abide by the terms of the bilateral contract once accepted by Baier. The trial court, however, was free to disbelieve Darden's self-serving expression of intent. Further, contrary evidence of Darden's intent existed in the record. The trial court reasonably could have concluded that the inclusion of a line for Darden's signature on the acknowledgement evidenced Darden's intent to condition its assent on signature.

Because the trial court could have concluded that Darden failed to sustain its burden to establish mutual assent to the proposed terms of a bilateral contract, the trial court's denial of Darden's motion is not legally erroneous.

**Opinion by: Cynthia L. Martin, Judge**

February 25, 2014

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